

July 7, 2022

Manuel Gonzales, III, Sheriff  
Bernalillo County Sheriff's Office  
400 Roma Ave. NW  
Albuquerque, New Mexico 87102

Re: Prosecutorial Review of the August 24, 2020 shooting of David Sanchez by Bernalillo County Sheriff's Deputies Anthony Szurek and Lorenzo Herrera.

D.A. Case #2020-06783-1  
Bernalillo County Sheriff's Office Case #SO20080010262

Dear Sheriff Gonzales:

I have been appointed as a Special Prosecutor by Second Judicial District Attorney Raul Torrez to review, for potential prosecution, the August 24, 2020 shooting of David Sanchez by Bernalillo County Sheriff's Deputies Anthony Szurek and Lorenzo Herrera. After a review of all available evidence, including police reports, witness interviews, photographs, a review of the evidence with Case Agent Detective Roger Garcia, and a visit to the scene of the shooting, I conclude that when Deputies Szurek and Herrera discharged their weapons, they were acting under a reasonable belief that David Sanchez's actions posed a significant threat of death or great bodily harm to law enforcement officers at the scene as well as to nearby residents. Accordingly, criminal charges against Deputies Szurek and Herrera are not warranted and the case will be closed. This decision does not limit administrative or criminal action by other agencies, or civil actions by other parties.

## RELEVANT FACTUAL BACKGROUND

On August 24, 2020, at approximately 4:00 p.m., Bernalillo County Sheriff's Office (BCSO) deputies were dispatched to the area of Florence Ave. and Louisiana Blvd. NE in reference to a male subject pointing a firearm at various homes and at passing vehicles. Deputies arrived in the area of 7051 Beverly Hills Ave. NE, and located a male subject in a large open field surrounded by numerous residential buildings. The subject, later identified as David Sanchez, was armed with a tan-colored handgun. The deputies were wearing their patrol uniforms, which displayed their service badges, and were driving fully marked BCSO patrol vehicles. The deputies utilized the PA system from their patrol units to identify themselves as deputies and to give commands to Mr. Sanchez to drop his firearm. Mr. Sanchez responded by turning towards deputies and taking a shooting position. Mr. Sanchez also fired his weapon several times in the direction of deputies. After Mr. Sanchez fired his weapon, two deputies discharged their respective firearms. Mr. Sanchez fell to the ground with the firearm still near him. Deputies approached Mr. Sanchez and kicked the gun away. Deputies rendered aid after observing at least one gunshot to Mr. Sanchez's body. Mr. Sanchez was pronounced deceased on scene by medical personnel.

In the aftermath of the shooting, a multi-agency task force, consisting of the Bernalillo County Sheriff's Office, the Albuquerque Police Department, and the New Mexico State Police Department, conducted an exhaustive investigation of the officers' actions and the events leading up to the shooting, including interviews with the deputies involved, interviews with members of the public who witnessed the events, and a review of Mr. Sanchez's personal and criminal history.

The initial 911 caller, Chris Gabaldon, provided a statement to BCSO Detectives Cameron Carroll and Miguel Cordova on August 25, 2020, the day after the shooting. Mr. Gabaldon stated that on August 24, 2020, at approximately 3:50 p.m., he left his residence to go to work. He was driving

toward Louisiana Blvd. on Florence Ave. when he noticed a car parked on the north side of Florence Ave., which to him was unusual because it was not a place where people generally parked their cars. Once the vehicle caught his attention, Mr. Gabaldon looked north towards an open field and observed a man, pacing, pointing and yelling. Again, Mr. Gabaldon thought this was very unusual for the neighborhood. Mr. Gabaldon then observed that the man was holding a desert-colored handgun at his side. Mr. Gabaldon immediately called 911 because he was afraid that the man was going to shoot at passing drivers. Mr. Gabaldon parked his vehicle and tried to divert traffic away from the intersection of Florence Ave. and Louisiana Blvd. Mr. Gabaldon stated that he left the area when law enforcement officers arrived.

BCSO Deputy Lorenzo Herrera provided a voluntary statement to Case Agent and lead investigator Detective Roger Garcia. In his statement, Deputy Herrera stated that on August 24, 2020, he was riding with his Field Training Officer BCSO Deputy Joshua Shores. Deputy Herrera and Deputy Shores were in a marked patrol unit and both deputies were in full BCSO uniform. At one point, early in their swing shift, they received a high-priority call, in which dispatch stated that there was an armed individual walking around and waving a gun in an open field. Deputy Herrera noted that two other units in addition to his unit were dispatched to the area of Louisiana Blvd. and Florence Ave. NE. Dispatch also informed the deputies that the initial 911 caller was at that intersection and was using his vehicle to block and redirect traffic away from the man with the gun. When the deputies arrived at the scene, they were flagged down by Chris Gabaldon, the 911 caller. Deputy Herrera stated that Mr. Gabaldon looked very scared, but was able to provide a description of the individual with the gun, stating that the man was dressed in all black. Mr. Gabaldon also pointed out what he thought might be the subject's vehicle. While Deputies Herrera and Shores were talking to Mr. Gabaldon, two additional BCSO deputies

arrived on the scene. The four deputies discussed the information that Mr. Gabaldon provided and decided to first approach the vehicle that Mr. Gabaldon believed belonged to the man with the gun.

The four deputies approached the east end of an open field and found the vehicle that was described by Mr. Gabaldon. The vehicle was running, but the doors were unlocked and there was nobody inside the vehicle. While the deputies were clearing the vehicle, Deputy Herrera noticed that residents in the nearby houses were trying to get the deputies' attention, pointing towards the open field. The deputies drove a short distance westbound down Florence Ave. and turned northbound on Louisiana Blvd. because they also heard over the radio that someone saw the subject on Louisiana Blvd. The deputies parked on Louisiana Blvd., between Florence Ave. and Beverly Hills Ave. The deputies saw the individual, later identified as David Sanchez, in the field near some trees. Deputy Shores instructed Deputy Herrera to get his rifle so the deputies would have a better view. Deputy Herrera retrieved his rifle while Deputy Anthony Vigil used a P.A. system to give commands to Mr. Sanchez to drop the gun. Mr. Sanchez did not drop the weapon, but walked in a northerly direction towards Beverly Hills Ave. Deputy Herrera then heard Deputy Anthony Szurek state, over the radio, that the armed individual was pointing the gun right at him. Someone on the radio called for anybody with a rifle to go to Beverly Hills Ave., because they had a better view of the individual. Deputies Herrera and Shores got back into their patrol unit, drove north on Louisiana Blvd. and turned east on Beverly Hills Ave., and parked near Sergeant Stephan Cotton's vehicle. Deputy Herrera observed Mr. Sanchez standing in an area of the field that was higher in elevation than the street level where the deputies were located. Deputy Herrera noted that Mr. Sanchez's elevated position gave him a tactical advantage over the deputies.

Deputy Herrera positioned himself behind his patrol unit and located Mr. Sanchez through the scope attached to the deputy's rifle. Mr. Sanchez was holding a gun and would alternate between raising the gun in the direction of deputies and lowering the gun to his side. Mr. Sanchez also got down

on one knee, causing Deputy Herrera to believe that Mr. Sanchez was taking aim at deputies. Based on his training and experience, Deputy Herrera knew that dropping to one knee while firing a gun helps with stabilization. It appeared to Deputy Herrera that Mr. Sanchez was aiming his gun towards Deputy Szurek's position. Deputy Herrera was concerned for the safety of the deputies that were at the scene as well as for the safety of the residents in the nearby houses. While Deputy Herrera was focusing on Mr. Sanchez's actions, a puff of powder came from the muzzle of Mr. Sanchez's gun. Deputy Herrera also observed the recoil of Mr. Sanchez's gun. Based on his training and experience with firearms, Deputy Herrera knew that Mr. Sanchez had fired his handgun. Deputy Herrera was frightened because Mr. Sanchez is now actively shooting in the direction of the deputies and in the direction of neighborhood houses with residents possibly in the line of fire. In addition to fearing for Deputy Szurek's life, Deputy Herrera also feared for his own life, knowing that all Mr. Sanchez had to do was to pivot and begin firing in Deputy Herrera's direction. Deputy Herrera heard Sergeant Cotton and Deputy Shores continue to give commands for Mr. Sanchez to drop the gun. Through the scope on his rifle, Deputy Herrera saw a second powder flash and recoil of Mr. Sanchez's gun. Deputy Herrera knew that Mr. Sanchez's actions had to be stopped and prepared himself to shoot at Mr. Sanchez. Deputy Herrera took careful aim and tried to control his breathing, noting that there were houses, and possibly residents, in the background that he had to take into consideration when firing his weapon. Deputy Herrera did not want to miss the target and possibly harm an innocent bystander. While Deputy Herrera was taking aim, he saw Mr. Sanchez fire his gun a third time. All thoughts and concerns, other than eliminating the threat, ceased at this point and Deputy Herrera fired his rifle to prevent Mr. Sanchez from firing any additional shots and possibly killing someone. Deputy Herrera believed that he had stopped the threat posed by Mr. Sanchez because he observed Mr. Sanchez drop to one knee. Mr. Sanchez, however,

raised his arm again as if he was going to shoot the gun a fourth time. Deputy Herrera fired a second shot to prevent Mr. Sanchez from firing again. Mr. Sanchez fell to the ground and rolled onto his back.

Deputy Herrera, along with Sergeant Cotton, Deputy Shores, Deputy Charles Coggins, and Deputy Joshua Baca approached Mr. Sanchez. Deputy Herrera observed the tan handgun near Mr. Sanchez's body. Sergeant Cotton kicked the gun further away from Mr. Sanchez's body. Deputies checked Mr. Sanchez's clothing for additional weapons, and, finding none, began to render aid. Deputy Herrera began chest compressions while Deputy Shores opened his trauma kit and applied chest seals. Paramedics arrived and continued to render medical aid to Mr. Sanchez.

Deputy Anthony Szurek also provided a voluntary statement to Detective Roger Garcia. Deputy Szurek stated that on August 24, 2020, he was dispatched to the area of Florence Ave. and Louisiana Blvd. to assist other deputies dealing with an individual waving a gun at residences. When Deputy Szurek approached the area, he observed the subject, later identified as David Sanchez, standing in a field with an object in his hand. Deputy Szurek could not initially identify the object that Mr. Sanchez was waving around. Sergeant Cotton advised Deputy Szurek that Mr. Sanchez had already discharged a firearm in the sergeant's direction. Deputy Szurek armed himself with his department-issued rifle and took cover behind the rear of his patrol vehicle. Once behind his vehicle, Deputy Szurek observed Mr. Sanchez aim a gun towards houses in the area and fire a round. Mr. Sanchez then abruptly turned around and fired another round in the direction of Sergeant Cotton. Deputy Szurek saw Sergeant Cotton take cover behind his vehicle. Deputy Szurek moved towards the passenger side of his vehicle to get a better view of Mr. Sanchez. Mr. Sanchez then pointed his gun directly at Deputy Szurek and fired another round. Deputy Szurek stated that he actually heard the snap of the bullet fly past his head. Deputy Szurek observed Mr. Sanchez aim his weapon back towards Sergeant Cotton's position. Deputy Szurek gave several commands for Mr. Sanchez to drop the gun, but these commands were ignored.

Deputy Szurek could also hear other deputies over the P.A. system give commands to Mr. Sanchez to drop the gun. In an attempt to stop the threat posed by Mr. Sanchez, Deputy Szurek fired a series of shots, striking Mr. Sanchez. Deputy Szurek initially fired three rounds and then paused to reassess the threat. He observed Mr. Sanchez stumble somewhat, but then Mr. Sanchez raised his gun again. Deputy Szurek fired two more times and then moved to the opposite side of his patrol unit in case Mr. Sanchez was going to shoot towards the area from where Deputy Szurek was shooting. From the driver's side of his vehicle, Deputy Szurek observed Mr. Sanchez look in his direction and raise the gun again. Deputy Szurek fired two more shots. Mr. Sanchez then fell to the ground. In total, Deputy Szurek believed that he fired seven rounds from his rifle. Deputy Szurek stated that he used lethal force because he feared for his life as well as the lives other deputies.

Deputy Szurek, along with several other deputies, approached Mr. Sanchez's body. Deputy Szurek covered the deputies with his rifle as they approached Mr. Sanchez. Sergeant Cotton and other deputies made sure that Mr. Sanchez did not have any other weapons. Deputy Szurek observed a tan semi-automatic handgun near the body. A photograph of the semi-automatic handgun found near Mr. Sanchez's body is provided below.



*Photograph of David Sanchez's semi-automatic handgun.*

David Sanchez's wife, Angela Sanchez was also interviewed during the investigation of the shooting. Ms. Sanchez stated that her husband was bipolar and had been using cocaine. She also stated that Mr. Sanchez had become very paranoid recently. Mr. Sanchez had threatened to commit suicide and stated that he was going to force law enforcement to shoot him. Because of these statements, Ms. Sanchez stated that she had secured her husband's firearms, but she believed that he had recently purchased a handgun from an unknown male.

Numerous other witnesses observed David Sanchez waving a gun and/or firing his weapon. None of these witnesses provided any information that was inconsistent with the statements of the deputies involved in the shooting.

#### ADDITIONAL CONSIDERATIONS

An autopsy was conducted on the body of David Sanchez. The autopsy revealed three gunshot wounds to the chest and back that damaged the heart and lungs, broke ribs, and caused bleeding within the chest cavity and in the sac that surrounds the heart. A gunshot wound of the forehead caused bleeding around the brain. The cause of death was determined to be gunshot wounds to the trunk. Toxicology testing of the postmortem femoral blood detected methamphetamine, and its breakdown product amphetamine, cocaine, and its breakdown product benzoylecgonine, and norbuprenorphine, a breakdown product of the opioid drug buprenorphine.

Mr. Sanchez's criminal history included domestic disputes in 2014, 2018 and in 2020. In 2014, Mr. Sanchez was arrested for battery on a household member. In 2020, there was an order of protection filed by Angela Sanchez against Mr. Sanchez. Additionally, Mr. Sanchez was the subject of a report of a suicidal individual.



## LEGAL ANALYSIS

The question presented in this case is whether Deputies Lorenzo Herrera and Anthony Szurek, at the moment they fired their weapons, were acting under a reasonable belief that David Sanchez presented a threat of death or serious harm? Under New Mexico law, a peace officer while in the performance of his or her lawful duties may justifiably use deadly force when the officer reasonably believes that the officer or another is threatened with serious harm or deadly force. § 30-2-6 NMSA 1978. An officer who uses deadly force need not prove that a suspect actually posed a threat of death or great bodily harm to another; he need only offer evidence that the suspect's actions raise the possibility of death or great bodily harm. Once an officer who uses deadly force raises the possibility that a suspect's actions posed a threat of death or great bodily harm, the burden is on the prosecution to prove beyond a reasonable doubt that the use of deadly force was *not* reasonable. This inquiry is an objective standard, viewed from the perspective of the officer at the time of the incident with the understanding that officers often must make split-second decisions about the amount of force that is necessary in a particular situation in circumstances that are tense, uncertain, and rapidly evolving. It requires only a finding that a reasonable person in the same circumstance as the officer would have come to the same conclusion that the use of force was necessary because of the threat of death or great bodily harm posed by the suspect. *State v. Mantelli*, 2002-NMCA-033. If the jury has a reasonable doubt as to whether the shooting was justifiable, the jury must find the officer not guilty. Uniform Jury Instruction-Criminal 14-5173 NMRA.

Evidence clearly shows that on August 24, 2020, Deputies Herrera and Szurek were acting in the performance of their lawful duties when they responded to a call for service in reference to an individual walking around an open field and waving a gun. Deputy Herrera observed Mr. Sanchez fire his handgun in the direction of other deputies present at the scene and in the direction of neighborhood houses.